

27 May 1984

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SCHLESINGER/ BRINKLEY: Mr. Schlesinger, Mr. Helms, thank  
HELMS INTERVIEW for coming in. It's a pleasure to have  
us today.

I'd like, first, to ask you the same question we've asked everyone else about this massing of Iranian troops we heard about this morning. I wonder if you could add anything to what we know about it. Mr. Schlesinger?  
JAMES\SCHLESINGER (former CIA director): I think that the massing of the troops is not really much in the way of news. These buildups occur regularly. This one has been reported some time. Indeed, the news has been the slowness, on this occasion, in which the Iranians have moved against Iraq after making these threats for an extended period, and their turning to attacks on the tankers, which suggests that they think that they may have exhausted their possibilities for overrunning Iraq. It merely suggests that. HELMS: If they're going to attack, it seems to me in the next two or three weeks would be the time to do it for religious reasons. The holy month of Ramadan starts on May 31. Now in history, the prophet Mohammed had his first great military victory in the battle of \*Bagra in 624 A.D., so the holy month is alleged to be the magical time in which to attack the infidel, even though he happens to be lot of Moslems on the other side.

WILL: Mr. Helms, the conventional wisdom has been that Khomeini has the population base and the fanaticism to continue this indefinitely, but we just heard the ambassador from Iraq say far from being a religious fanatic, he is deep down inside a politician who knows how to make a deal and cut his losses. Is that your assessment of the man? Is this a war that can end with a conventional deal? HELMS: I don't think so, because I think the Ayatollah Khomeini has a blood feud with Pres. Saddam Hussein of Iraq. I really believe this. He sees that he, Khomeini, got the shah, he got Jimmy Carter, and he has every intention of getting Pres. Saddam Hussein, and he wants his head on a platter, and I don't think he intends to stop the war until he gets it.

BRINKLEY: Well, Khomeini was hiding out in Iraq and was kicked out, wasn't he? HELMS: That's right. That's one of the reasons why he's mad at Saddam. He's also mad at him for attacking his country.

WILL: Mr. Schlesinger, you said in several interviews recently that the United States must think now about what

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## Claims Truth as Defense in Libel Case

# CBS Asks Westmoreland Suit Dismissal

By PETER J. BOYER and JAY SHARBUTT, Times Staff Writers

NEW YORK—CBS, asserting that a television documentary accurately reported that Army Gen. William C. Westmoreland deceived the public and the government about U.S. military failures in Vietnam, asked a federal judge Wednesday to dismiss Westmoreland's \$120-million libel suit against the network.

In an encyclopedic, 379-page motion for summary judgment supported by 620 pages of sworn affidavits and depositions, CBS laid its case before U.S. District Judge Pierre Leval. Contending that Westmoreland's suit was a misguided quest for "absolution" for the deceptions he practiced as U.S. commander in Vietnam, CBS asked Leval to dismiss the case on four grounds:

- That the disputed 1982 CBS documentary, which accused Westmoreland and his military command of deliberately underestimating enemy strength for political reasons, was true.

- That the documentary, "The Uncounted Enemy: A Vietnam Deception," was an expression of opinion protected by the First Amendment.

- That Westmoreland provided "no evidence whatsoever of actual malice" on the part of CBS. To prove that they have been libeled by the media, public figures must show "actual malice" on the part of the news organization.

- That Westmoreland, in his capacity as commander of U.S. forces in Vietnam from 1964 to mid-1968, represented the U.S. government, and the government has no right to sue for libel.

One significant element of the CBS motion was its emphasis on the documentary's truth. "I would say it is a bold stroke," said Henry Kauffman, director of the Libel Defense Resource Center in New York, a nonprofit group financed by various news organizations, including CBS.

Of 110 motions for summary judgment filed by libel defendants from 1979 to 1981, only three employed the truth defense, according to a study by the center.

The disputed CBS documentary, which was aired on Jan. 23, 1982, was reported by George Crile, a producer, and correspondent Mike Wallace.

Clearly CBS intended the brief to be both a demonstration of its faith in the broadcast as well as a show of the legal might at its disposal. The mammoth volume of CBS evidence was compiled by a team of lawyers in the Wall Street firm of Cravath, Swaine & Moore and was then submitted to two well-known libel experts, Floyd Abrams and Robert D. Sack, who were hired by CBS solely to review the motion.

### Host of Witnesses

Hoping to demonstrate the unassailability of its case, CBS presented testimony from a host of witnesses, including former Secretary of Defense Robert S. McNamara and 28 CIA and military intelligence analysts.

Dan Burt, Westmoreland's attorney, was not available for immediate comment Wednesday but earlier he had said that CBS's case hinged largely on "low-level analysts who don't know what they're talking about."

Burt pointed out that the pretrial phase of the case has yielded testimony from several senior military and government officials, including former Secretary of State Dean Rusk and former CIA Director Richard M. Helms, who dispute the CBS theme.

The documentary maintained, and the CBS motion sought to prove, that Westmoreland was under intense political pressures in 1967-68 to show that the United States was winning its "war of attrition" in Vietnam.

In 1967, according to the CBS brief, Westmoreland's intelligence staff reported to Washington a sharp increase in enemy attacks. That report prompted a cable from Army Gen. Earle G. Wheeler, chairman of the Joint Chiefs of Staff, to Westmoreland, warning that "if these figures should reach the public domain, they would, literally, blow the lid off of Washington. Please do whatever is necessary to ensure these figures are not repeat not released to news media or otherwise exposed to public knowledge."

It was thus made clear to Westmoreland, the CBS brief contended, that bad news about enemy progress "could endanger the whole thesis of progress in the war."

So, two months later, when Westmoreland's intelligence analysts gave him estimates of the enemy's growing military strength, CBS asserts, "Westmoreland did not again disappoint his superiors in Washington by confronting them with the harsh reality of lack of progress."

Westmoreland did not forward to Washington a report approved by his intelligence chief indicating greater enemy strength because, he testified in a deposition cited by CBS, the new figures "would be easily misunderstood" in Washington and "could have been contrary to the interest of the Administration, who wanted to make good our commitment (to South Vietnam)."

To support its allegation that higher estimates of enemy strength were deliberately suppressed for political reasons, CBS offered the sworn statements of several former intelligence analysts.

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Associated Press

Gen. Westmoreland

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WASHINGTON POST  
24 May 1984

# CBS Asks Dismissal Westmoreland Suit

By Eleanor Randolph  
Washington Post Staff Writer

Libel lawyers for CBS argued yesterday that sworn statements from almost 40 military and intelligence analysts from the Vietnam war years prove the network's charge that the U.S. military command in Vietnam lied about enemy troop strength to bolster political support for the war in the late 1960s.

In a motion asking U.S. District Court Judge Pierre Leval to dismiss a \$120 million libel action against CBS by retired Army Gen. William C. Westmoreland, network lawyers said that "few broadcasts have been as thoroughly researched" as a Mike Wallace program called "The Uncounted Enemy: A Vietnam Deception," which ran in January, 1982.

Included in the CBS brief are quotations from letters that a former Army analyst sent his wife.

"You should have seen the antics my people and I had to go through with our computer calculations to make the February strength calculations come out the way the general wanted them to," one read. "We started with the answer and plugged in all sorts of figures until we found the combination the machine would digest."

The writer of the letter, James Meacham, now a journalist in London, has said recently that he was merely dissatisfied with his work and did not mean the letters to be construed years later as evidence of a conspiracy.

The CBS brief also quoted Richard Kovar, a 30-year CIA veteran who now writes President Reagan's daily CIA briefing, as saying that the CBS documentary is "a great service to the intelligence process."

The network brief also contended that Kovar said it should be broadcast annually on the anniversary of the Tet offensive "so that no intelligence analyst, soldier or citizen who watches it will ever let anything like this happen again."

Ronald Smith, a 25-year CIA intelligence officer and analyst who is at the Department of Energy, said that for CBS to call efforts to hold down enemy troop estimates a "conspiracy . . . accurately describes the concerted effort undertaken by military officials to distort and suppress critical intelligence information about the enemy we faced in Vietnam."

Drawing from almost 400,000 pages of court documents that have made the case an unusually detailed chronicle of one of the most crucial periods in the war and an important case for the media, CBS used a rare tactic in this pre-trial stage of a libel case, saying that the documentary is true and thus is not libelous. Such an assertion normally awaits the findings of the court as a result of the trial.

As a fallback to a more standard legal position in such cases, CBS lawyer David Boies also argued

that First Amendment protections of a free press in this country should warrant dismissal of Westmoreland's "attempt . . . to impose a price on criticism of the way in which our government's highest officials exercise their official powers" by his filing of the libel suit.

Boies acknowledged that the broadcast has flaws, some of which were the subject of a highly critical article in TV Guide last year and a recently released book charging that CBS set out to "smear" Westmoreland.

But Boies argued that "none of those flaws implicates either the truth of what the broadcast says or CBS' belief in it."

Don Kowet, author of a controversial new book about the documentary, "A Matter of Honor," and Sally Bedell, now with The New York Times, wrote the an article in TV Guide, "Anatomy of a Smear—How CBS Broke the Rules and 'Got' Westmoreland."

After the story, CBS conducted an internal investigation that criticized the network for re-interviewing some witnesses unfairly, for not identifying former CIA analyst Sam Adams on the air as a paid CBS consultant and for failing to prove that there was a "conspiracy" by the military to "cook" the figures, as such manipulations are sometimes called.

In June, 1983, CBS suspended the show's producer, George Crile, for taping telephone interviews with former secretary of defense Robert S. McNamara and others without their knowledge. The tapes and the internal CBS investigation have become a part of the voluminous record.

Westmoreland's lawyer, Dan M. Burt, said he could not comment in detail on a motion he had not read. He labeled as "ridiculous" a CBS argument that Westmoreland

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